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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/749,089
Filing Date: December 30, 2003
Appellant(s): DRESTI ET AL.

Gary R. Jarosik
Reg. No. 35,906
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 4, 2009 appealing from the Office action mailed July 20, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 21-31.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0028,208 A1	ELLIS et al.	02-2005
2003/0149988 A1	ELLIS et al.	8-2003
6,597,374 B1	Baker et al.	7-2003
6,763,522 B1	Kondo et al.	7-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 21-25,27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (US 2005,0028208 A1) – hereinafter referred to as E208, in view of Baker et al. (US 6,597,374 B1).

Note: US 20030149988 A1 (hereinafter referred to as E988) is continuation of application Ser. No. 09/332,244, which is incorporated by reference in its entirety in E208 (see E208 –paragraphs 0017, 0127).

Regarding claim 21, E208 discloses a method for displaying programming information in a display of a remote control device having a memory (e.g., displaying program guide information in a display of remote access device 24 having memory 56– see include, but are not limited to, figures 5, 8-10, paragraph 0092). E208 further storage 56 of the remote control stored program guide information (e.g., reminder settings, favorite settings, listings information including information for icons of title, channel, time, etc.) – see include, but are not limited to, paragraphs 0067, 0103, 0129, figures 5, 7-10). The remote access device (24) can be used to set reminder (e.g., by selection of “reminder” button displayed on screen of remote access device) or select channel for recording a program on videocassette record, digital storage device or any other device by selection of “channel” and “recording” buttons displayed on the screen of remote access device (see include, but are not limited to, figures 7-10, paragraphs 0017, 0117, 0125-0127; the remote access device (24) can be used to remotely change the current channel being tuned, change volume, or control user television equipment 22 in any other suitable manner (see include, but is not limited to, paragraph 0138). Ellis further

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discloses user selects a particular button/key on the remote access device to command operations of a plurality of appliances such as commanding particular recording device to record a program, commanding the set top box to tune to particular channel, or commanding the user television equipment to send favorite program guide information for display on the display of the remote access device, etc. – see include, but are not limited to, figures 2a-5, 7-10, paragraphs 0107-0110, 0125-0127, 0138). A library of command codes for use in commanding operations of a plurality of appliances must be stored in the memory (e.g. storage 56) of the remote access device so that when the user select a button/key using the remote access device 24, a particular device at the user television equipment performs appropriate operation (e.g. recording, setting reminder, generate favorite program guide, tune to a channel, change volume, etc.) in response to the command from the remote access device, the method comprising:

creating a favorites page displayable in the display of the remote control, the favorites page being comprised of a plurality of icons wherein each of the plurality of icons is associated with a channel that is tunable to by at least one of the plurality of appliances (generating a program guide screen, based on user profiles/preferences settings, favorite program settings, for display on the screen of the remote access device, the generated program guide screen being comprised of a plurality of icons such as channel icons, program title icons, etc. wherein each of the plurality of icons (e.g. channel icon, program icon, etc.) is associated with a channel (e.g. channel 2 (CBS), channel 47 (HBO), etc.) that is tunable by at least the set top box, recording

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device for view or recording – see include, but are not limited to, figures 3-4, 7-10, paragraphs 0017, 0107-110, 112-115, 0117, 0123-0126, 0134);

E208 further discloses user selects a particular buttons/icons (e.g. program title icon, channel icon, theme icon, reminder button, recording button, etc.) on the displayed screen to command a particular device at the user television equipment to perform associated function such as tune to a channel/program associated with the selected icon to view, to record, set a reminder, etc., - see include, but are not limited to, figures 2a-5, 7-10, 18-22, paragraphs 0107-0110, 0125-0127, 0134, 0138, 0163-0164, 0171 and discussed in “response to argument” above). Thus, each of the plurality of icons within the favorite page is inherently assigned with at least one command code from the library of command codes stored in the memory of the remote control device (for example, channel icon is assigned with channel command code, reminder button is assigned with reminder command code, recording button is assigned with recording command code, etc.) so that when an icon/button on the screen is selected, a function assigned to the selected icon/button is performed;

the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device to the intended recipient one of the plurality of appliance so that a selected device performs the function (e.g. tune to the selected channel) associated with the selected channel icon on the screen;

E208 further discloses displaying in the display of the remote control device the favorite pages (displaying program guide screen based on user profile, preferences, etc. - see include, but are not limited to, paragraphs 0123-0127);

in response to the user selecting one of the plurality icons in the favorite page when displayed in the display of the remote control device, displaying in the display of the remote control device in a first window area information relevant to content available from a provider of content on the channel associated with the selected one of the plurality of (e.g. in response to user selection of the icon, display information such as program title, description, channel, pay per view information, or reminder information, etc. associated with the selected icon on an area of the display screen – see include, but are not limited to, figures 7-10, 42, paragraphs 0115, 0118-0119, 0127-0129, 0154, E988: figures 14d-16, 20, and Boyer, figures 16, 27).

E208 discloses the remote access device 24 commands operations of a plurality of appliances (videocassette recorder, set top box, storage device, etc. – paragraph 0017). However, E208 does not explicitly disclose the remote control directly commands operations of a plurality of appliances.

Baker discloses a remote control comprises a display for displaying favorite page (figures 1-2,4,7b), the remote control also having a memory 34 in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances (see include, but are not limited to, figures 1-3, 12, col. 4, lines 1-55, col. 5, line 1-col. 6, line 47, col. 6, line 62-col. 7, line 21, col. 8, lines 39-67). Therefore, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to modify E208 with the teaching as taught by Baker in order to reduce delay of transmitting command to controllable device.

Regarding claim 22, E208 in view of Baker discloses a method as discussed in the rejection of claim 21. E208 further discloses the program guide listings include information of the channel currently being presented by the provider of the content on the channel and displayed additional information of the channel associated with the selected icon (paragraphs 0067, 0112-0113; E988: figure 18c, Boyer, figures 16, 18, 26 paragraph 0102). Inherently, when the user selects an icon on the program guide display screen associated with content currently being presented by the provider of the content on the channel (e.g., KCBS, CNN, etc.), information relevant to the selected icon will be displayed on the first area window (e.g. area for displaying detail information of the channel associated with the selected icon – see include, but is not limited to, Boyer, figure 16).

Regarding claim 23, E208 in view of Baker discloses a method as discussed in the rejection of claim 21. E208 further discloses the information displayed in the first window area is relevant to content to be presented in the future by the provider of content on the channel associated with the selected one of the plurality of icons (display on the screen additional/detail information of the future program associated with the selected icon –

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see include, but are not limited to, paragraphs 0115, 0117-0118, and discussed in claim 12 when an icon associated with future program is selected).

Regarding claim 24, E208 in view of Baker discloses a method as discussed in the rejection of claim 22. E208 further discloses displaying in the display of the remote control device in a second window, in response to the user selecting of one of the plurality of icons, information relevant to content to be presented in the future by the provider of content on the channel associated with the selected one of the plurality of icons (display on portion of the screen additional/detail information of the future program associated with the selected icon – see include, but are not limited to, paragraphs 0115, 0117-0118, and discussed in claim 12 when an icon associated with future program is selected).

Regarding claim 25, E208 in view of Baker discloses a method as discussed in the rejection of any one of claim 21-24. E208 further discloses selected device at the user television equipment receives a command from the remote access device and performs appropriate function such as recording, set reminder, tuning to selected channel, etc. in response to the user selecting of one of the plurality of icons in the program guide screen when displayed in the display of the remote access device 24(see include, but are not limited to, paragraphs 0015, 0107-0110, 0123, 0134, 0138, 0154, 0160-0163). Thus, in response to the user selecting of one of the plurality icons in the favorites page when displayed in the display of the remote control device, the remote control device

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inherently transmit the at least one command code assigned to the selected one of the plurality of icons so that appropriate function (e.g., tuning, recording, etc.) is performed by the selected device at the user television equipment in response to the selected icon.

Regarding claim 27, E208 in view of Baker discloses a method as discussed in the rejection of any one of claims 21-23. E208 further discloses the user using the remote access device to command displaying of additional/detail information, reminder, etc. of the selected program, pay per view program, etc. on the screen, the user also select to close display of the additional/detail information, reminder, etc. (for example, after user selects "Ok" or "NO" or "Yes" or "Cancel" or when the user select another icon on the program guide, see include, but are not limited to, figure 9, paragraphs 0115, 0117-0119, 0154, E988: figures 14b-17, Boyer, figure 16). Thus, the limitation of "accepting user input into the remote control that functions to expand and contract the first window area in the display of the remote control device" is interpreted as receiving user input into the remote access device that functions to display additional information, detail information, or reminder of the program on an area of the display screen and close the area that displayed detail information, reminder, additional information on the screen.

Regarding claim 28, E208 in view of Baker discloses a method as discussed in the rejection of claim 27. E208 further discloses expansion and contraction of the first window area allows overlay and display, respectively, of a user interface page having command function keys simultaneously displayed in the display of the remote control

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and having command function keys activatable to cause the remote control device to transmit to one or more of the plurality of appliances further command codes from the command code library (interpreted as expansion of window area 1331, window area 1339, window area 1347, window area 370, or window area 380, in response to user selecting of an icon on the program guide such as icon associated with currently broadcast program (program being watched) allows the window area 1331, 1339, or 1347 overlay program guide, and contraction/removing of the window area in response to user selection “No” or “Cancel”, or “OK” , or “Yes” on the window allows display of the program guide; wherein the program guide has command functions keys such as channel buttons, program title buttons, reminder button, etc. that is when selected, to cause the remote access device to transmit a command (and inherently with a command code selected from the command code library) the a particular device at the user television equipment to perform associated function such as tune to channel to receive selected program, command the selected recording device to record selected program, etc.— see include, but is not limited to, figures 7 –10, 16-19, paragraphs 0108-0110, 0117-0119, , 0134, 0154, 0164, 0220, E988: figures 14b, 14d, 14e, 15a-16, paragraphs 0134-0138).

Regarding claims 29-30, the limitations that corresponding to the limitations of claims 27-28, and are analyzed as discussed in the rejection of claims 27-28 respectively, wherein functions to expand and contract the second window area is interpreted as the user selects to display additional information, detail information, or reminder of the

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future program on an area of the display screen and then close the area that displayed the reminder, additional information, or detail information of future program (see include, but are not limited to, figure 9, paragraphs 0115, 0117-0119, 0154, E988, figures 14b-17, Boyer, figure 16).

Regarding claim 31, E208 in view of Baker discloses a method as discussed in the rejection of claim 21. E208 further discloses wherein the favorite page is created and each of the plurality of icons within the favorites pages is assigned at least one command code from the library of command codes stored in the memory of the remote control device in response to user input received directly into the remote control device (e.g., user input a “guide” or “menu” button on the remote access device to display to the program guide screen based on user profile/preferences, wherein the program guide screen having a plurality of icons – see include, but are not limited to paragraphs 0108-0110, 0123-0127), wherein the limitation “user input is received directly into the remote control device” is interpreted as user presses/touch button/icon on the remote access device 24).

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over E208 in view of Baker as discussed in claim 24 above, and further in view of Kondo et al. (US 6,763,522).

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Regarding claim 26, E208 in view of Baker teaches a method as discussed in the rejection of claim 24. However, E208 does not explicitly disclose first window area and second window area are simultaneously displayed with the program guide page.

Kondo discloses the event information panel 52 and further event information panel 65 or 142 are displayed simultaneously with program guide page which contains selected channel icon 54 (see include, but are not limited to, figures 2A-2C). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify E208 in view of Baker to use the teaching of simultaneously displaying first window area (which display information of content associated with a selected icon) and second window area (which display information of content associated with another selected icon) with the program guide screen in order to allow the user to simultaneously see the detail/additional information of the selected icons thereby allow the user to compare and select a prefer content.

(10) Response to Argument

A. Rejection of claim 21 (pages 4-10)

Appellant argues while the rejection of the claims asserted that "a library of command codes for use in commanding operations of a plurality of appliances must be stored in the memory of the remote access device so that when the user selects a button/key using the remote access device 24, a particular device at the user television perform appropriate operation", it was later acknowledged, in direct contradiction, that Ellis does not disclose, teach, or suggest a remote control that is capable of directly

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commanding operations of an appliance (page 5, paragraph 2). This argument is respectfully traversed.

It is not necessary that a remote control, which has a library of command codes for use in commanding operations of a plurality of appliances, must have capability to directly commanding operations of an appliance. The remote control that is capable of commanding operations of an appliance by sending command to the appliance via other network/device or other component. For example, a remote control device controls a recording device by sending command code via a set top box or television distribution facility and the set top box or television distribution facility relays the command code received from the remote access control to the recording device commanding operations of the appliance (figures 2b, 6b). Therefore, there is no in direct contradiction in the rejection.

In response to applicant's arguments against the references individually (Ellis is itself incapable of directly commanding any functions of an appliance - page 8), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the rejections are based on combination of Ellis and Baker. The rejections indicated E208 does not explicitly disclose the remote control device directly commands operations of a plurality of appliance and Baker is relied on for the teaching of remote control device directly commands operations of a plurality of appliances (please refer to final office action, page 8).

Appellant further argues the combination of Ellis and Baker does not teach, disclose, or suggest "assigning to each of the plurality of icons within the favorite page at least one command code from the library of command codes stored in the memory of the remote control device, the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device directly to the intended recipient one of the plurality of appliances" because Ellis is used only to access functions that are provided by a local interactive television program guide, and it is the local interactive television program guide that, in fact, commands appliance functions such as VCR recording control and/or channel tuning; the memory of the remote access device of Ellis need not store command codes for commanding operations of a plurality of appliances but, to the contrary, need only store the "event data" that is necessary to inform a local interactive television program guide which button a user selected to thereby allow the local interactive television to perform a corresponding action (pages 8-9). This argument is respectfully traversed.

Ellis discloses program guide information (e.g., reminder information, listings information (program title, channel, time, description, theme, etc.), recording information, favorites settings, parental control, data particular suitable for transmission scheme, etc. are stored on storage 56 of the remote access device (see include, but are not limited to, paragraphs 0067, 0072-0073, 0103, 0121, 0124, 0129). The program

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guide screen/page generated using program guide information includes channel buttons, "reminder" button, "recording" button, etc. (see include, but are not limited to, paragraphs 0113, 0117, 0125). Ellis also discloses the remote access program guide run by remote access device (24) also provide a user with an opportunity to control selected user television equipment 22 remotely. A user may, for example, position highlight region 201 over a setting, select the setting, and change its value. The user may, for example, change the current channel, the current volume, or control selected user television equipment 22 in any other suitable manner (paragraph 0138). The user may uses the remote access device 24 to select one of program title page displayed on the remote control device (e.g., pushing an on-screen "button,"). The remote access control device may response by sending communications to the local interactive program guide implemented on interactive television program to record the program associated with the selected listing when the program is aired at a recording storage device/location of recording selected by the user using the remote access control device (see include, but are not limited to, paragraphs 0017, 0072, 108,110,114-115,117, 0125, 0127, 0133, , 0136, 0137, 0138, 0158, 0159, 0169, 0187, 0188, 0220-0221, 0224 -0025). Thus, a library of command codes for use in commanding operations of a plurality of appliances must be stored in the memory (e.g. storage 56) of the remote access device so that when the user select an on screen button displayed on the remote access device 24, a particular device/device at particular location performs appropriate operation (e.g. recording, setting reminder, generate favorite program

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guide, tune to a channel, change volume, etc.) in response to the command from the remote access device (paragraphs 0138, 0220-0221);

Each of the plurality of icons (on-screen icons/buttons) within the favorite page is inherently assigned with at least one command code from the library of command codes stored in the memory of the remote control device (for example, channel icon is assigned with channel command code, reminder-button is assigned with reminder command code, recording button is assigned with recording command code, etc.) so that when a button is selected, a particular function assigned to the selected button/icon is performed (see for example, paragraphs 0117, 0127, 0129, 0220); and

the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device to the intended recipient one of the plurality of appliance so that in response to selection of particular command using remote access device, only device selected in response to selected button performs the function (i.e., tune to a channel associated with selected channel icon –see for example, paragraphs 0127, 0138, 0142, 0163-0164, 0220).

E208 discloses the remote access device 24 commands operations of a plurality of appliances (videocassette recorder, set top box, storage device, at different locations – paragraph 0017, 0138,0220). However, E208 does not explicitly disclose the remote control directly commands operations of a plurality of appliances.

Baker discloses a remote control comprises a display for displaying favorite page (figures 1-2,4,7b), the remote control also having a memory 34 in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances (see include, but are not limited to, figures 1-3, 12, col. 4, lines 1-55, col. 5, line 1-col. 6, line 47, col. 6, line 62-col. 7, line 21, col. 8, lines 39-67).

Therefore, the combination of Ellis and Baker discloses all limitations as claimed including remote control device having a memory in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances.

In addition, Appellant argues the remote control device claimed in claim 21 is directed to a remote control of the "universal type" (page 6). It is noted that the remote control of "universal type" is not recited in claim 21. In addition, Baker also discloses a remote control of the "universal type" (universal remote control -see col. 1, lines 30-32, col. 2, lines 16-55).

It is further noted that, in Ellis, if the remote access device only needs to store the "event data" and provide "event data" to controlling device as argued by the Appellant (pages 8-9), how can only device(s)/location selected by the remote access device performs function in response to user selection of a button using remote access device?(see for example, Ellis, paragraphs 0138, 0142, 0163-0164, 0220).

Appellant further argues modification of Ellis is impermissible because the modification change the very principle by which the system of Ellis is intended to operate (page 10, paragraph 2). This argument is respectfully traversed.

the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Ellis discloses a method for displaying programming information in a display of a remote control device comprises all features as claimed as discussed above. Ellis does not explicitly disclose the mote control directly commands operations of a plurality of appliances. Ellis also discloses various modifications can be made by those skilled in the art (see E208: paragraph 0229). Baker discloses a remote control comprises a display for displaying favorite page (figures 1-2,4,7b), the remote control also having a memory 34 in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances (see include, but are not limited to, figures 1-3, 12, col. 4, lines 1-55, col. 5, line 1-col. 6, line 47, col. 6, line 62-col. 7, line 21, col. 8, lines 39-67).

Thus, all claimed elements were known by the combination of Ellis and Baker. It would have been obvious to one of ordinary skill in the art to modify Ellis with the teaching as taught by Baker, with no change in the respective functions of displaying program guide page on the remote control device and using remote control device to command operations of multiple device in Ellis, in order to yield predictable results such as to reduce delay of transmitting command to controllable devices.

Therefore, the combination of Ellis and Baker is permissible.

B) The rejection of claims 22-25 and 27-31 (page 10).

Please see response to rejection of claim 21 in section A above.

C) The rejection of claim 26 (page 11).

Please see response to rejection of claim 21 in section A above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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